IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHELLE KIRKLAND	:	CIVIL ACTION
v.	:	
MCP-HAHNEMANN SCHOOL OF MEDICINE	:	NO. 99-940

MEMORANDUM OPINION

R. F. KELLY, J. JUNE , 1999

Before the court is Defendant's Motion to Dismiss the Complaint. The complaint seeks to force the defendant, the proper name of which is Allegheny University of the Health Sciences ("the University"), to reinstate plaintiff as a medical student in addition to monetary damages.

On January 9, 1998, the University's First Year Subcommittee decided to drop Kirkland from its rolls based on her academic record. Kirkland appealed this decision to the Student Promotions Committee. On March 26, 1998, the Student Promotions Committee adopted the recommendation of the First Year Subcommittee that Kirkland be dropped from the rolls of the Medical School. This was again appealed to the Student Promotions Committee, which on May 13, 1998 affirmed its prior decision. Kirkland then appealed to the Dean of the Medical School, and on July 27, 1998 the Dean affirmed the decision of the Student Promotions Committee.

It is not disputed that at the time this action was filed the University had filed a Voluntary Petition for Relief under Chapter 11 of Title 11 of the United States Code in the United States District Court for the Western District of Pennsylvania. That petition was filed on July 21, 1998.

It is the University's position that the plaintiff's claim is void *ab initio* because it is a prepetition claim asserted in a postpetition complaint in violation of the automatic stay provisions of 11 U.S.C. § 362(a) of the Bankruptcy Code.

Plaintiff does not dispute that a prepetition claim filed postpetition is void *ab initio*, but

argues only that her claim is not prepetition. Plaintiff asserts that her claim did not accrue until July 27, 1998 when the Dean of the Medical School affirmed the earlier decision to dismiss plaintiff as a student.

Under federal law, in the context of the accrual of the statute of limitations for a discrimination case, the Supreme Court has stated that "the proper focus is on the time of the discriminatory act, not the point at which the consequences of the discriminatory act became painful." Chardon v. Fernandez, 454 U.S. 6, 8 1981 (citing Delaware State College v. Rick's, 449 U.S. 250, 258 (1980)). Thus, for the purpose of accruing statutes of limitations in discrimination cases, the relevant date is when the individual is aware of or should be aware of the unlawful act that caused injury. See Ricks, 449 U.S. at 262 n.16. The fact that the adverse decision is appealable does not extend the statute of limitations. See id. at 262 n.15 (holding that the statute of limitations began to run when the college made it appear to the plaintiff professor its official position that he would be terminated, not when that decision was ultimately affirmed after a grievance process.)

In wrongful dismissal claims regarding students, the statute of limitations begins to accrue on the date that the student first received notice of his or her dismissal. See Herbert v. Reinstein, 976 F.Supp. 331 (E.D. PA 1997), where the court granted the defendant's motion to dismiss plaintiff's § 1983 claim as untimely, finding that the statute of limitations had accrued when the student first knew about the sanctions that were imposed upon him by the Disciplinary Committee, aff'd, 162 F.2d 1151 (3d Cir. 1998), cert denied, 119 S. Ct. 1113 (1999); see also Mead v. Regents of the University of California, 1998 WL 165919 (9th Cir. 1998).

In the case of Siblerud v. Colorado State Board of Agriculture, 896 F. Supp. 1506 (D. Colo. 1995), a case very similar to the case at hand, the court held that the plaintiff's cause of action accrued when plaintiff was initially notified of his dismissal on April 11, 1990. April 11, 1990 was the date Siblerud received notice from his department head that he was dismissed. See id. at 1509. This was so even though Siblerud appealed his dismissal and received a letter from

the provost and academic vice president upholding his dismissal almost a year later on March 4, 1991.

Plaintiff argues that the April 11, 1990 letter in Siblerud corresponds with the July 27, 1998 letter from the Dean upholding her dismissal. A reading of both cases indicates that the April 11, 1990 letter in Siblerud is analogous not to plaintiff's July 27, 1998 letter, but to the January 9, 1998 letter to plaintiff informing her that she was being dropped from the student rolls.

Plaintiff also contends that the statute of limitations did not begin to run until July 27, 1998 because she continued to attend classes while she appealed her dismissal. With reasoning that applies to this case, the Supreme Court in Delaware State College v. Ricks, 449 U.S. 250, 261 (1980), ruled that "mere continuity of employment, without more, is insufficient to prolong the life of a cause of action for employment discrimination." I find that the Court's rationale applies equally to a student's continuing attendance at class while she appeals the decision to dismiss her.

I therefore find that plaintiff's cause of action accrued on January 9, 1998. The bankruptcy petition was filed on July 21, 1998, more than six months after plaintiff's cause of action accrued. Because plaintiff's complaint is based on a cause of action that accrued prior to the filing of the bankruptcy petition in violation of the automatic stay provisions of the Bankruptcy Code, 11 U.S.C. § 362(a), it is void *ab initio*.

I therefore enter the following Order.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHELLE KIRKLAND	:	CIVIL ACTION
v.	:	
MCP-HAHNEMANN SCHOOL OF MEDICINE	:	NO. 99-940

O R D E R

AND NOW, this day of JUNE, 1999, it is hereby ORDERED that defendant's motion to dismiss the complaint is GRANTED. It is further ORDERED that plaintiff's complaint is DISMISSED.

BY THE COURT:

_____
ROBERT F. KELLY, J.